

STANDARD

**U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 2:18-cv-00176-JDL**

AMERICAN CIVIL LIBERTIES UNION OF MAINE
FOUNDATION v. US DEPARTMENT OF HOMELAND
SECURITY et al

Assigned to: JUDGE JON D. LEVY

Referred to: MAGISTRATE JUDGE JOHN H. RICH III

related Case: 2:18-cv-00182-JDL

Cause: 05:552 Freedom of Information Act

Date Filed: 05/01/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

**AMERICAN CIVIL LIBERTIES
UNION OF MAINE FOUNDATION**

represented by **EMMA EATON BOND**
AMERICAN CIVIL LIBERTIES UNION
OF MAINE
121 MIDDLE STREET
SUITE 200
PORTLAND, ME 04101
207-619-8687
Email: ebond@aclumaine.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ZACHARY L. HEIDEN
AMERICAN CIVIL LIBERTIES UNION
OF MAINE
121 MIDDLE STREET
SUITE 200
PORTLAND, ME 04101
207-774-5444
Fax: 207-774-1103
Email: zheiden@aclumaine.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**US DEPARTMENT OF HOMELAND
SECURITY**

represented by **ANDREW K. LIZOTTE**
U.S. ATTORNEY'S OFFICE
DISTRICT OF MAINE
100 MIDDLE STREET PLAZA
PORTLAND, ME 04101
(207) 771-3246
Fax: (207) 780-3304
Email: andrew.lizotte@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAMES D. CONCANNON
U.S. ATTORNEY'S OFFICE
DISTRICT OF MAINE
100 MIDDLE STREET PLAZA
PORTLAND, ME 04101
207-780-3257
Email: james.concannon@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

**US CUSTOMS AND BORDER
PROTECTION**

represented by **ANDREW K. LIZOTTE**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAMES D. CONCANNON
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/01/2018	<u>1</u>	COMPLAINT against US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY PAYMENT OF FILING FEE DUE WITHIN 48 HOURS. IF FILING FEE IS BEING PAID WITH A CREDIT CARD COUNSEL ARE INSTRUCTED TO LOGIN TO CMECF AND DOCKET Case Opening Filing Fee Paid FOUND IN THE Complaints and Other Initiating Documents CATEGORY. CHECK PAYMENTS DUE WITHIN 48 HOURS. , filed by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. (Service of Process Deadline 7/30/2018) Fee due by 5/3/2018. (Attachments: # <u>1</u> Request, # <u>2</u> 3/21/2018 Letter to Greyhound Lines Inc, # <u>3</u> 4/19/2018 Letter to Concord Coach Lines, # <u>4</u> 4/19/2018 Letter to Peter Pan Bus Lines, # <u>5</u> Request to CBP offices in Hodgdon, Maine)(sfw) (Entered: 05/01/2018)
05/01/2018	<u>2</u>	CIVIL COVER SHEET. (sfw) (Entered: 05/01/2018)
05/01/2018		Filing Fee Paid via Credit Card (Filing fee \$ 400 receipt number 0100-1834729.), filed by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION.(BOND, EMMA) (Entered: 05/01/2018)
05/14/2018	<u>3</u>	AFFIDAVIT of Service by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. US CUSTOMS AND BORDER PROTECTION served on 5/1/2018; US DEPARTMENT OF HOMELAND SECURITY served on 5/1/2018. (Attachments: # <u>1</u> Exhibit Return Receipt – Certified Mail)(BOND, EMMA) (Entered: 05/14/2018)
05/14/2018	<u>4</u>	NOTICE of Appearance by ANDREW K. LIZOTTE on behalf of All Defendants (LIZOTTE, ANDREW) (Entered: 05/14/2018)
05/15/2018	<u>5</u>	NOTICE of Appearance by JAMES D. CONCANNON on behalf of US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY (CONCANNON, JAMES) (Entered: 05/15/2018)
05/16/2018	<u>6</u>	Summons Issued as to US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY. Counsel shall print the embossed summons and effect service in the manner in accordance with Fed.R.Civ.P.4. Note-If you are using Version 6 of Adobe Acrobat, be sure the PRINT WHAT field is set to DOCUMENTS AND COMMENTS (Click File, then Print to check this setting). (Attachments: # <u>1</u> Summons – CBP)(akr) (Entered: 05/16/2018)
05/21/2018	<u>7</u>	AFFIDAVIT of Service by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. All Defendants. (Attachments: # <u>1</u> Appendix Return Receipt – Certified Mail)(BOND, EMMA) (Entered: 05/21/2018)
05/22/2018		Set Answer Deadline for US DEPARTMENT OF HOMELAND SECURITY and US CUSTOMS AND BORDER PROTECTION : Answer due by 7/17/2018. (akr) (Entered: 05/22/2018)
05/22/2018		Reset Answer Deadline for US DEPARTMENT OF HOMELAND SECURITY and US CUSTOMS AND BORDER PROTECTION : Answer due by 6/18/2018 pursuant to 5 U.S.C. § 552(a)(4)(C). (akr) (Entered: 05/22/2018)
06/18/2018	<u>8</u>	ANSWER to <u>1</u> Complaint,,, by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY.(LIZOTTE, ANDREW) (Entered: 06/18/2018)

		06/18/2018)
06/19/2018	<u>9</u>	SCHEDULING ORDER: Discovery due by 11/5/2018. Written Notice of Intent to File Summary Judgment Motion and Request for Pre-Filing Conference due by 11/13/2018. Motions due by 11/26/2018. Ready for Trial on 2/4/2019. By MAGISTRATE JUDGE JOHN H. RICH III. (mjlt) (Entered: 06/19/2018)
07/03/2018	<u>10</u>	Joint MOTION to Amend Scheduling Order <i>and Joint Report of 26(f) Conference</i> by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY Responses due by 7/24/2018. (LIZOTTE, ANDREW) (Entered: 07/03/2018)
07/05/2018	11	ORDER granting without objection <u>10</u> Motion to Amend Scheduling Order. Without objection, the parties are directed to file a written joint status report by August 17, 2018, addressing the status of defendants' search for and production of records responsive to the FOIA request at issue herein, the status of any negotiation on the scope and timing of future productions, and the parties' proposed schedule for future proceedings herein. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 07/05/2018)
07/05/2018		Set Deadlines Pursuant to Order #11 entered on July 5, 2018: Status Report due by 8/17/2018– the parties are directed to file a written joint status report addressing the status of defendants' search for and production of records responsive to the FOIA request at issue herein, the status of any negotiation on the scope and timing of future productions, and the parties' proposed schedule for future proceedings herein. (mtm) (Entered: 07/06/2018)
08/16/2018	<u>12</u>	STATUS REPORT <i>Submitted by Joint Agreement</i> by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY. (LIZOTTE, ANDREW) (Entered: 08/16/2018)
08/16/2018	13	Joint MOTION for Permission to File Second Joint Status Report (No PDF attached. See ECF #12) by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY (akr) (Entered: 08/17/2018)
08/17/2018	14	ORDER granting without objection 13 Joint Motion for leave to file second Joint Status Report. The parties shall file their second Joint Status Report, as requested, by October 12, 2018. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 08/17/2018)
08/17/2018		Set Deadlines : Status Report due by 10/12/2018. (akr) (Entered: 08/17/2018)
10/12/2018	<u>15</u>	STATUS REPORT <i>and Joint Motion for Permission to File Third Joint Status Report</i> by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY. (LIZOTTE, ANDREW) (Entered: 10/12/2018)
10/12/2018	16	Joint MOTION for Permission to File Third Joint Status Report (No PDF attached. See ECF #15) by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY (akr) (Entered: 10/12/2018)
10/15/2018	17	ORDER granting without objection 16 Motion for Leave to File Third Joint Status Report. The parties shall file their third Joint Status Report by November 2, 2018, addressing the parties' proposals for future proceedings, whether further record production, summary judgment briefing, or resolution of the case. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 10/15/2018)
10/15/2018		Set Deadlines : Status Report due by 11/2/2018. (akr) (Entered: 10/15/2018)
10/16/2018		Set Deadlines : Per Local Rule 7.1 Notice of Interested Parties or Corporate Disclosure Statement due by 10/22/2018 as to AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. (akr) (Entered: 10/16/2018)
10/22/2018	<u>18</u>	NOTICE of Interested Parties by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION (BOND, EMMA) (Entered: 10/22/2018)
11/02/2018	<u>19</u>	STATUS REPORT <i>Joint</i> by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. (BOND, EMMA) (Entered: 11/02/2018)

11/02/2018	20	Joint MOTION for Permission to File Fourth Joint Status Report (No PDF attached. See ECF #19) by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION (akr) (Entered: 11/02/2018)
11/04/2018	21	ORDER granting without objection 20 Joint Motion for Leave to File Fourth Joint Status Report. The parties shall file their fourth Joint Status Report by December 17, 2018, addressing the proposed schedule for future proceedings, if any. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 11/04/2018)
11/04/2018		Set Deadlines : Status Report due by 12/17/2018. (akr) (Entered: 11/05/2018)
12/17/2018	<u>22</u>	STATUS REPORT and Joint Motion for Briefing Schedule by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. (BOND, EMMA) (Entered: 12/17/2018)
12/17/2018	23	Joint MOTION for Briefing Schedule by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. No PDF attached – See ECF #22 (akr) Modified on 12/17/2018 to add referenced to ECF #22 (akr). (Entered: 12/17/2018)
01/07/2019	24	ORDER granting without objection 23 Joint Motion for briefing schedule re redacted documents. The plaintiff shall designate the challenged redacted documents by February 1, 2019; the plaintiff shall file the challenged redacted documents and its memorandum opposing the claimed exemptions (no longer than 10 pages) by February 22, 2019, and the defendants shall submit the unredacted documents for <i>in camera</i> review and shall file their simultaneous memorandum in support of the claimed exemptions (no longer than 10 pages), also by February 22, 2019; the parties shall file simultaneous response briefs (no longer than 7 pages) by March 8, 2019; and the court may thereafter schedule oral argument as it deems necessary. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 01/07/2019)
01/07/2019		Set Deadlines pursuant to the Order at ECF #24 : Redacted Document Designation (1) due by 2/1/2019. Challenged Redacted Documents Filing (2) due by 2/22/2019. Memo Opposing Claimed Exemptions due by 2/22/2019. Memorandum in Support of Claimed Exemptions (1) due by 2/22/2019. Simultaneous Response Brief (2) due by 3/8/2019. (akr) (Entered: 01/07/2019)
02/15/2019	<u>25</u>	Consent MOTION to Extend Time to file briefs regarding redaction by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION Responses due by 3/8/2019. (BOND, EMMA) (Entered: 02/15/2019)
02/20/2019	26	ORDER granting without objection <u>25</u> Motion to Extend Time. The plaintiff shall file the challenged redacted documents and its memorandum opposing the claimed exemptions (no longer than 10 pages) by March 8, 2019, and the defendants shall submit the unredacted documents for in camera review and shall file their simultaneous memorandum in support of the claimed exemptions (no longer than 10 pages), also by March 8, 2019; the parties shall file simultaneous response briefs (no longer than 7 pages) by March 22, 2019; and the court may thereafter schedule oral argument as it deems necessary. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 02/20/2019)
02/20/2019		Reset Deadlines : Challenged Redacted Documents Filing (1) due by 3/8/2019. Memorandum Opposing Claimed Exemptions (1) due by 3/8/2019. Memorandum in Support of Claimed Exemptions(2) due by 3/8/2019. Simultaneous Response Briefs (3) due by 3/22/2019. (akr) (Entered: 02/20/2019)
03/08/2019	<u>27</u>	AFFIDAVIT of USBP FOIA Coordinator Robert M. Lewandowski filed by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY. (Attachments: # <u>1</u> Attachment 1, REDACTED Trans check Presentation, # <u>2</u> Attachment 2, REDACTED TCB Bangor 481s, # <u>3</u> Attachment 3, REDACTED Bangor TCB emails, # <u>4</u> Attachment 4, REDACTED FW_ Bus Check, # <u>5</u> Attachment 5, REDACTED Bangor Bus Check, # <u>6</u> Attachment 6, REDACTED FW_ Checkpoint)(LIZOTTE, ANDREW) (Entered: 03/08/2019)
03/08/2019	<u>28</u>	BRIEF re <u>27</u> Affidavit, <i>in Support of Defendants' Redactions</i> by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY. (LIZOTTE, ANDREW) (Entered: 03/08/2019)

03/08/2019	<u>29</u>	BRIEF <i>Objecting to Redactions of Public Records</i> by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. (Attachments: # <u>1</u> Exhibit A – Redacted Public Records)(BOND, EMMA) (Entered: 03/08/2019)
03/21/2019	<u>30</u>	RESPONSE re <u>29</u> Brief <i>Objecting to Redactions of Public Records</i> by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY. (LIZOTTE, ANDREW) Modified on 3/21/2019 to replace "Brief" with "Response"(akr). (Entered: 03/21/2019)
03/22/2019	<u>31</u>	RESPONSE re <u>28</u> Brief <i>Replying in Opposition to Redactions of Public Records</i> by AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. (BOND, EMMA) Modified on 3/22/2019 to replace "Brief" with "Response" (akr). (Entered: 03/22/2019)
05/08/2019	<u>32</u>	ORDER ADJUDICATING DISPUTED REDACTIONS By JUDGE JON D. LEVY. (akr) (Entered: 05/08/2019)
05/09/2019	33	NOTICE of Hearing: Telephone Conference re scheduling order deadlines set for 5/14/2019 11:30 AM with MAGISTRATE JUDGE JOHN H. RICH III. Counsel shall coordinate the call and contact chambers once both sides are on the line. (nrg) (Entered: 05/09/2019)
05/14/2019	34	Minute Entry for proceedings held before MAGISTRATE JUDGE JOHN H. RICH III: Conference of Counsel held re: case status; docket order to issue. (Court Reporter: FTR) (RICH III, JOHN) (Entered: 05/14/2019)
05/14/2019	35	ORDER re 33 Notice of Hearing. Following the court's Order Adjudicating Disputed Redactions, ECF No. 32, and at the request of Chief Judge Levy, I held a telephonic status conference on May 14, 2019, with Attorneys Bond and Lizotte for the plaintiff and defendants respectively. Counsel reported that the defendants served an updated production of documents on May 14, 2019, and that, accordingly, no further dispute exists between the parties on the merits, although the issue of the plaintiff's reasonable attorney fees remains to be negotiated. After discussion and at the parties' joint suggestion, I SET the following remaining schedule: the parties shall attempt to reach agreement on attorney fees by June 7, 2019; absent agreement, the plaintiff shall file its fee petition by June 28, 2019, the defendants their opposition by July 29, 2019, and the plaintiff its reply by August 13, 2019. Counsel agreed to notify the court in writing promptly if agreement is reached; I told counsel that, in that event, it was likely that the case would be administratively closed, pending settlement being finalized and a stipulation of dismissal being filed. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 05/14/2019)
05/14/2019		Set Deadlines per Order No. 35: If no agreement re: attorney fess is reached by 6/7/2019, then plaintiff shall file its fee petition by 6/28/2019; response due by 7/29/2019; reply due by 8/13/2019. (lrc) (Entered: 05/15/2019)
06/03/2019	<u>36</u>	Consent MOTION to Extend Time to Reach Agreement on Attorney Fees and Associated Deadlines by US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY Responses due by 6/24/2019. (LIZOTTE, ANDREW) (Entered: 06/03/2019)